

ASSEMBLY BILL

No. 54

Introduced by Assembly Member Olsen

(Principal coauthor: Assembly Member Gray)

(Principal coauthors: Senators Berryhill, Cannella, and Galgiani)

**(Coauthors: Assembly Members Bigelow, Grove, Mathis, Patterson,
Perea, and Salas)**

(Coauthors: Senators Fuller and Vidak)

December 1, 2014

An act to amend Section 55.56 of, and to add Section 55.565 to, the Civil Code, relating to public accommodations.

LEGISLATIVE COUNSEL'S DIGEST

AB 54, as introduced, Olsen. Public accommodations: construction-related accessibility claims.

Existing law allows a plaintiff to collect statutory damages in a construction-related accessibility claim against a place of public accommodation only if the plaintiff was denied full and equal access to the place of public accommodation on a particular occasion, as specified. Existing law imposes a \$1,000 limit on statutory damages when a defendant demonstrates that the defendant has, among other things, cured the construction-related accessibility violation within 60 days of being served with a complaint. Existing law requires a demand letter alleging a construction-related accessibility claim to, among other things, state facts sufficient to allow a reasonable person to identify the basis of the claim.

This bill would, when a plaintiff brings a claim alleging a violation of a construction-related accessibility standard within 3 years of a change in that standard, allow a plaintiff to collect statutory damages only if

the plaintiff also provides the owner, agent, or other party responsible for the place in violation with a written notice or demand letter at least 60 days prior to filing any action and the violation is not cured. The bill would require the written notice or demand letter to contain specified information.

Vote: majority. Appropriation: no. Fiscal committee: no.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 55.56 of the Civil Code is amended to
2 read:

3 55.56. (a) Statutory damages under either subdivision (a) of
4 Section 52 or subdivision (a) of Section 54.3 may be recovered in
5 a construction-related accessibility claim against a place of public
6 accommodation only if a violation or violations of one or more
7 construction-related accessibility standards denied the plaintiff
8 full and equal access to the place of public accommodation on a
9 particular-~~occasion~~ occasion, and the requirements of Section
10 55.565 have been met, if applicable.

11 (b) A plaintiff is denied full and equal access only if the plaintiff
12 personally encountered the violation on a particular occasion, or
13 the plaintiff was deterred from accessing a place of public
14 accommodation on a particular occasion.

15 (c) A violation personally encountered by a plaintiff may be
16 sufficient to cause a denial of full and equal access if the plaintiff
17 experienced difficulty, discomfort, or embarrassment because of
18 the violation.

19 (d) A plaintiff demonstrates that he or she was deterred from
20 accessing a place of public accommodation on a particular occasion
21 only if both of the following apply:

22 (1) The plaintiff had actual knowledge of a violation or
23 violations that prevented or reasonably dissuaded the plaintiff from
24 accessing a place of public accommodation that the plaintiff
25 intended to use on a particular occasion.

26 (2) The violation or violations would have actually denied the
27 plaintiff full and equal access if the plaintiff had accessed the place
28 of public accommodation on that particular occasion.

29 (e) Statutory damages may be assessed pursuant to subdivision

30 (a) based on each particular occasion that the plaintiff was denied

1 full and equal access, and not upon the number of violations of
2 construction-related accessibility standards identified at the place
3 of public accommodation where the denial of full and equal access
4 occurred. If the place of public accommodation consists of distinct
5 facilities that offer distinct services, statutory damages may be
6 assessed based on each denial of full and equal access to the distinct
7 facility, and not upon the number of violations of
8 construction-related accessibility standards identified at the place
9 of public accommodation where the denial of full and equal access
10 occurred.

11 (f) (1) Notwithstanding any other law, a defendant's liability
12 for statutory damages in a construction-related accessibility claim
13 against a place of public accommodation is reduced to a minimum
14 of one thousand dollars (\$1,000) for each offense if the defendant
15 demonstrates that it has corrected all construction-related violations
16 that are the basis of a claim within 60 days of being served with
17 the complaint, and the defendant demonstrates any of the following:

18 (A) The structure or area of the alleged violation was determined
19 to be "CAsp-inspected" or "meets applicable standards" and, to
20 the best of the defendant's knowledge, there were no modifications
21 or alterations that impacted compliance with construction-related
22 accessibility standards with respect to the plaintiff's claim that
23 were completed or commenced between the date of that
24 determination and the particular occasion on which the plaintiff
25 was allegedly denied full and equal access.

26 (B) The structure or area of the alleged violation was the subject
27 of an inspection report indicating "CAsp determination pending"
28 or "Inspected by a CAsp," and the defendant has either
29 implemented reasonable measures to correct the alleged violation
30 before the particular occasion on which the plaintiff was allegedly
31 denied full and equal access, or the defendant was in the process
32 of correcting the alleged violation within a reasonable time and
33 manner before the particular occasion on which the plaintiff was
34 allegedly denied full and equal access.

35 (C) For a claim alleging a construction-related accessibility
36 violation filed before January 1, 2018, the structure or area of the
37 alleged violation was a new construction or an improvement that
38 was approved by, and passed inspection by, the local building
39 department permit and inspection process on or after January 1,
40 2008, and before January 1, 2016, and, to the best of the

1 defendant's knowledge, there were no modifications or alterations
2 that impacted compliance with respect to the plaintiff's claim that
3 were completed or commenced between the completion date of
4 the new construction or improvement and the particular occasion
5 on which the plaintiff was allegedly denied full and equal access.

6 (D) The structure or area of the alleged violation was new
7 construction or an improvement that was approved by, and passed
8 inspection by, a local building department official who is a certified
9 access specialist, and, to the best of the defendant's knowledge,
10 there were no modifications or alterations that affected compliance
11 with respect to the plaintiff's claim that were completed or
12 commenced between the completion date of the new construction
13 or improvement and the particular occasion on which the plaintiff
14 was allegedly denied full and equal access.

15 (2) Notwithstanding any other law, a defendant's liability for
16 statutory damages in a construction-related accessibility claim
17 against a place of public accommodation is reduced to a minimum
18 of two thousand dollars (\$2,000) for each offense if the defendant
19 demonstrates both of the following:

20 (A) The defendant has corrected all construction-related
21 violations that are the basis of a claim within 30 days of being
22 served with the complaint.

23 (B) The defendant is a small business that has employed 25 or
24 fewer employees on average over the past three years, or for the
25 years it has been in existence if less than three years, as evidenced
26 by wage report forms filed with the Economic Development
27 Department, and has average annual gross receipts of less than
28 three million five hundred thousand dollars (\$3,500,000) over the
29 previous three years, or for the years it has been in existence if
30 less than three years, as evidenced by federal or state income tax
31 returns. The average annual gross receipts dollar amount shall be
32 adjusted biannually by the Department of General Services for
33 changes in the California Consumer Price Index for All Urban
34 Consumers, as compiled by the Department of Industrial Relations.
35 The Department of General Services shall post that adjusted
36 amount on its Internet Web site.

37 (3) This subdivision shall not be applicable to intentional
38 violations.

39 (4) Nothing in this subdivision affects the awarding of actual
40 damages, or affects the awarding of treble actual damages.

1 (5) This subdivision shall apply only to claims filed on or after
2 the effective date of Senate Bill 1186 of the 2011–12 Regular
3 Session of the Legislature. Nothing in this subdivision is intended
4 to affect a complaint filed before that date.

5 (g) This section does not alter the applicable law for the
6 awarding of injunctive or other equitable relief for a violation or
7 violations of one or more construction-related accessibility
8 standards, nor alter any legal obligation of a party to mitigate
9 damages.

10 (h) In assessing liability under subdivision (d), in an action
11 alleging multiple claims for the same construction-related
12 accessibility violation on different particular occasions, the court
13 shall consider the reasonableness of the plaintiff’s conduct in light
14 of the plaintiff’s obligation, if any, to mitigate damages.

15 SEC. 2. Section 55.565 is added to the Civil Code, to read:

16 55.565. (a) When a plaintiff brings a construction-related
17 accessibility claim alleging a violation of a construction-related
18 accessibility standard within three years of a change in that
19 standard, statutory damages under subdivision (a) of Section 52
20 or subdivision (a) of Section 54.3 may be recovered against a place
21 of public accommodation only if the plaintiff provides the owner,
22 agent, or other party responsible for the place of public
23 accommodation where the alleged violation occurred with
24 sufficient written notice of the allegations and alleged access
25 barriers on which the claim is based at least 60 days prior to the
26 filing of any action and the alleged access barriers are not removed.

27 (b) A written notice is sufficient for the purposes of subdivision
28 (a) if either of the following conditions is met:

29 (1) The notice states facts sufficient to allow a reasonable person
30 to identify the basis of the construction-related accessibility claim
31 under subdivision (a) of Section 55.31 and states that the recipient
32 may be civilly liable for actual and statutory damages for a
33 violation of a construction-related accessibility requirement if the
34 access barriers that constitute the basis of the construction-related
35 accessibility claim are not removed within 60 days.

36 (2) The notice is a written demand letter that offers prelitigation
37 settlement negotiations in accordance with subdivision (b) of
38 Section 55.31.

39 (c) For the purposes of this section, “construction-related
40 accessibility claim,” “construction-related accessibility standard,”

- 1 and “place of public accommodation” have the meanings set forth
- 2 in Section 55.52.

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